IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.516 of 2002

R. Nachimuthu .. Appellant

vs.

Arulmighu Dhandayuthapani Swamigal
Thirukoil through its Executive Officer
And Joint Commissioner,
Palani Temple, Palani
Dindigul Anna District. .. Respondent

Writ Appeals filed under Clause 15 of the Letters Patent against the order of this court made in W.P.No.12190 of 1995 dated 15.02.2002 presented under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records pertaining to the proceedings of the respondent made in Na.Ka.No.1098/94-C6 dated 31.8.1995 so as to quash the same.

For appellant : Mr. N. Jothi
for Mr. S. Senthilnathan

For respondent : Mr. M. Venkatachalapathy,Sr.Counsel
for Mr. M. Sriram

JUDGMENT

(Judgement of the Court delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of learned Single Judge dated 15.2.2002 made in W.P.No.12190 of 1995, in and by which the learned judge, after finding no merit in the claim of the writ petitioner, dismissed his writ petition.

2. For convenience, we shall refer the parties as arrayed in the

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writ petition.

3. According to the petitioner, he was a lessee of the respondent, Arulmigu Dhandayuthapani Swamigal Thirukoil, Palani, in respect of a shop in the outer praharam of north-western extension, measuring 25' x 12' wherein he prepared aerated water and cool drinks and sold to devotees. The said business has been carried on for the past 60 years by his family. The shop was originally leased out to his elder sister's husband, by name, Marimuthu Pillai and after his demise, the lease continued in the name of his sister, Muthunachiammal and thereafter, it continued in the name of petitioner for the past 10 years. The shop was leased out by the Devasthanam and the rent was increased from time to time and as on date, there is no rent due from the petitioner.

4. The respondent on an earlier occasion, attempted to dispossess him forcibly and hence, the petitioner filed a civil suit in O.S.No.334 of 1990 on the file of Subordinate Judge, Dindigul for permanent injunction restraining the defendant/temple from interfering with his possession and enjoyment of the suit property except under due process of law. The suit was dismissed and the appeals filed were also dismissed. According to the petitioner, the dismissal of civil case would not give any right to the respondent to evict the petitioner, as a lawfully inducted lessee cannot automatically be evicted. However, in the impugned proceedings, the petitioner is asked to vacate on or before 8.9.1995 and in default, the petitioner is informed that drastic action will be initiated. The petitioner was a lessee for a period from 1.7.1987 to 30.6.1990 and subsequent to the expiry of lease period, he has been holding the leased out premises by operation of Section 116 of the Transfer of Property Act. In short, the status of the petitioner as lessee continued to be in operation irrespective of the lease having come to an end. The respondent failed to follow the procedure provided under section 80 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, 'the Act'). The right of appeal is also provided under Section 81 of the Act. Rule 4 of Removal of Encroachments on Lands or Buildings belonging to Religious Institutions Rules (in short, 'the Rules'), provides that 30 days time should be given to reply to the notice seeking eviction and if necessary further time should also be granted by the competent person who is acting under the Rules, but, in the impugned proceedings, the respondent has not complied with said Rule.

5. The Executive Officer/Joint Commissioner of the Temple has filed a counter affidavit wherein it is stated that though the petitioner was a lessee of the respondent in respect of a shop in the outer praharam of the north-western extension measuring 25' x 12' for the period from 1.7.1987 to 30.6.1990, the condition of lease is that on expiry of the said lease period, the lessee shall hand over the vacant possession of the shop. However, even after expiry of the said

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lease period, the petitioner is clinging to the property under some pretext or the other.

6. The petitioner had filed O.S.No.334 of 1990 on the file of Subordinate Judge, Dindigul praying for permanent injunction and after contest by the respondent, the said suit was dismissed with costs on 20.1.1994. The petitioner preferred an appeal in A.S.No.84 of 1994 on the file of District Court, Dindigul and the said appeal was also dismissed on 5.7.1995. Still aggrieved, the petitioner preferred second appeal in S.A.No.1053 of 1995 which was dismissed in limine on 21.8.1995. Since the relief asked for by the petitioner had already been negatived by the Courts and the lease period also came to an end, the respondent issued the impugned proceedings. Having failed to get the remedy before the Civil Court, the petitioner sought the above relief before this Court which cannot be entertained, and the writ petition is not maintainable and liable to be dismissed.

7. The learned Single Judge, after finding that the petitioner lost his case before the Civil Court and noting the conduct of the petitioner in enjoying the property even after expiry of the lease period, dismissed his writ petition. Hence, the present writ appeal.

8. Heard Mr.N.Jyothi, learned counsel for the petitioner and Mr.M.Venkatachalapathy, learned senior counsel for the respondent/temple.

9. It is not in dispute that the petitioner was a lessee in respect of the shop in the outer praharam of north-western extension measuring 25' x 12'. It is also not in dispute that the lease was for the period from 1.7.1987 to 30.6.1990 and as per the condition of lease, on the expiry of the lease period, the lessee shall hand over the vacant possession to the temple. Equally, it is not in dispute that the petitioner filed O.S.No.370 of 1990 on the file of District Munsif's Court, Palani for permanent injunction restraining the defendant/temple from interfering with his possession and enjoyment of the suit property/shop except under due process of law. Admittedly, the said suit came to be dismissed. Thereafter, the petitioner/plaintiff filed another suit in O.S.No.334 of 1990 on the file of Subordinate Judge, Dindigul for the same relief and after contest, the said suit was also dismissed on 20.1.1994. The appeal and the second appeal were dismissed on 5.7.1995 and 21.8.1995 respectively.

10. Mr.N.Jyothi, learned counsel for the petitioner vehemently contended that in the civil suit, the petitioner/plaintiff prayed only for injunction till he is evicted under due process of law and hence, the said suit is not a bar for filing the writ petition before this Court. According to him, irrespective of the dismissal of suit and appeals, the respondent/temple has to fully comply with the provisions

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of Section 80(1) and (2) of the Act and Rules 3 and 4 of the Rules.

11. We have verified the relief sought for in the suit and the findings as well as conclusion arrived at by the trial Court and appellate Courts including this Court in the second appeal. Since the learned counsel very much insisted that in the absence of recourse to the above provisions of the Act as well as the Rules, the respondent is not entitled to evict the petitioner, we intend to refer those provisions:

> "Section 80 (1) Eviction of lessees, licensees or mortgages with possession in certain cases.- Where the Assistant Commissioner having jurisdiction over the area in which the religious institution is situated is of the view that the lessee, licensee or mortgagee with possession of any land belonging to the religious institution, which is appurtenant to or adjoins the religious institution or any sacred tank, well, spring and water-course, appurtenant to the religious institution, whether situated within or outside the precincts thereof or any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institutions has taken any action which has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution, the Assistant Commissioner shall report the fact together with relevant particulars to the Joint Commissioner or the Deputy Commissioner as the case may be having jurisdiction over the area in which the religious institution is situated.
>
> (2) The Joint Commissioner or Deputy Commissioner as the case may be, if satisfied that the artistic appearance or the religious atmosphere of the religious institution has been marred or is likely to be marred by the action of the lessee, licensee or mortgagee with possession shall cause to be served on the lessee, licensee or mortgagee concerned a notice calling on him to show cause before a certain date why an order terminating the lease or licence or canceling the mortgage and requiring the lessee, licensee or mortgagee, as the case may be, to deliver possession of the property which is the subject to the lease, licence or mortgage to the trustee before the date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the religious institution concerned."

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Rule-3 Form and service of notice.-

(1)Every notice under sections 78(2), 79 (3), 80(2) and 81(3) shall be in forms A to D in the Schedule to these rules and shall be served on the encroacher, lessee, licensee or mortgagee, as the case may be, by registered post with acknowledgment due. A copy of the notice shall be communicated to the trustees of the institution also.

(2)

[(2) In case of refusal or evasion to receive the notice sent for service in the manner specified in sub-rule (1), notice shall be affixed on the front door or any conspicuous place of the residence of the person to whom the notice was sent if the person has changed his residence, the notice shall be sent to the changed address, if it is known or a copy of the notice shall be affixed on the front door or other conspicuous place of the last known address. In addition to the affixture of such notice in the manner specified above, such notice shall also be published by affixture in a conspicuous place of the property which forms part of these proceedings, so as to complete the service. Such affixture shall be deemed to be sufficient notice to the persons concerned specified in sub-rule (1)]

Rule-4.Contents of notice under Sections 78(3) and 80(3).-

The notice under section 78(2) and 80(3) of the Act shall provide 30 days time of the show cause and 15 days time for making an order under section 78(2) and 80(2) of the Act. The Joint Commissioner or the Deputy Commissioner may grant such further time as he deems fit.

(2) The notice shall specify the land, or space or building or the other details covered by the encroachment proposed to be removed as specified under section 78(2) of the Act and state the boundaries with survey numbers, if any, extent and such other relevant particulars as may be necessary to identify the land."

12. Rules 3 and 4 referred to above speak about the form, mode of service and contents of notice. As rightly argued by

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Mr.M.Venkatachalapathy, learned senior counsel for the respondent, section 80(1) of the Act would apply to lessee, licensee or mortgagee in possession of any land belonging to the religious institution, which has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution (Emphasis supplied). But, it is not the case of neither the petitioner, nor the respondent that the shop in question has marred or likely to mar the artistic appearance or the religious atmosphere of the religious institution for invoking the provision of sub-section (1) of section 80 of the Act. As argued by Mr.M.Venkatachalapathy, on the other hand, the relevant provision applicable is section 78 of the Act. No doubt, even for taking action under section 78 of the Act, the respondent has to follow the Rule 3 and 4 of the Rules, however, as rightly pointed out by the learned senior counsel for the respondent and observed by the learned Judge, as per the terms of lease, after expiry of lease period, i.e. on 30.6.1990, the petitioner had to vacate and hand over possession to the respondent/temple and in view of the fact that the petitioner lost his case before the civil Court up to the level of second appeal before this Court, we are of the view that the respondent cannot be faulted with in issuing the impugned notice dated 31.8.1995.

13. In this regard, it is worthwhile to refer to the observation made by the learned Judge in judgment dated 21.8.1995 in S.A.No.1053 of 1995 as under:

> "2. …. Both the Courts have found that he is not entitled to the injunction for the reason that he has agreed in the tenancy agreement that he would surrender possession of the property after the expiry of the period and therefore, he is not entitled to ask for injunction as he is that of a trespasser. …."

In the same paragraph, the learned Judge has further observed,

> " …..But in this case the records reveal that the appellant herein had filed the previous suit O.S.No.370 of 1990 on the file of the District Munsif, Palani for the very same relief that he shall not be dispossessed except under due process of law and that suit has been dismissed. In the cross examination of the plaintiff/appellant, he has admitted the fact that the previous suit for the same relief has been dismissed. When the relief sought for now in this appeal was also claimed in the previous suit and the same was refused the remedy for the appellant would be to file an appeal against that decree. But without doing that, in the subsequently instituted suit he

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has asked for the same relief. ….”

After finding so, the learned Judge, dismissed the second appeal at the admission stage itself. As stated earlier, though the procedures provided in Rules 3 and 4 of the Rules have to be followed by the respondent, irrespective of civil proceedings filed by the petitioner, in view of specific undertaking of the petitioner that he will hand over possession after expiry of three year lease period, and in view of the fact that even thereafter, several notices have been issued by the temple authorities to the petitioner, we are of the view that no further indulgence need be shown to the petitioner. Further, in the impugned notice dated 31.08.1995, there is a specific reference to several notices sent by the temple authorities to the petitioner for handing over possession of the shop in question. Para-3 of the impugned notice is relevant, which reads as under:

“தங்களுக்கு மேல்கண்ட திருக்கோயில் நிர்வாகம் கடை நடத்த அனுமதித்திருந்த மூன்று வருட காலம் 1.7.87 முதல் 30.6.90 உடன் முடிவடைந்த விட்டது தாங்கள் ஒப்பக் கொண்டபடி சொத்தைத் திருக்கோயில் வசம் சுவாதீனம் ஒப்படிக்குமாறு பலமுறை கேட்டும் தாங்கள் அவ்வாறு சுவாதீனம் ஒப்படிக்காமலும் திருக்கோயில் அனுமதியின்றும் சட்டத்திற்கும் நியாயத்திற்கும் பறம்பாக இதுநாள் வரை தொடர்ந்து சுவாதீனத்தில் இருந்து கொண்டு துர்லாபம் அடைந்து வருகிறீர்கள்."

Emphasis Supplied.

14. As rightly pointed out, the above paragraph leads to a irresistible conclusion that after the expiry of lease period the petitioner was reminded by way of several notices, however, he did not comply with the same. In those circumstances, we are satisfied that the petitioner is not entitled to contend that either he was not given adequate opportunity, nor the conditions prescribed in the above referred Rules were fulfilled and accordingly, we reject the contention of the learned counsel for the petitioner. It is also relevant to mention here that admittedly, the shop in question is at the top of the hill and according to the respondent, more area is required for providing better amenities to the pilgrims.

Under these circumstances, we are unable to agree with the contention raised by the learned counsel for the petitioner/appellant and on the other hand, we are in agreement with the stand taken by the respondent. We find no valid ground to interfere with the order of the

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learned Judge. Consequently, the writ appeal fails and the same is dismissed. No costs. The petitioner/appellant is granted time till 31.01.2007 to vacate and hand over possession of the shop.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Executive Officer and Joint Commissioner,
Palani Arulmighu Dhandayuthapani Swamigal
Thirukoil
Palani
Dindigul District.

+1cc to Mr.M.Sriram, Advocate Sr 1217

HPR (CO)
km/12.1.

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